Supplemental Materials:

Regulatory Changes and Updates

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Kansas

Office of the Securities Commissioner

FILED
MAY 21 2012
Kansas
Securities Commissioner

BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF KANSAS

In re:	)	
	)	
Waiver of Bonding Requirements	)	Docket No. 12E 024
Under K.A.R. 81-14-9(e)	)	
	)	

Special Order – Waiver of Surety Bond Requirements for Investment Advisers Under K.A.R. 81-14-9(e)

WHEREAS, the current version of K.A.R. 81-14-9(e) requires every investment adviser registered or required to be registered under the Kansas Uniform Securities Act (KUSA) that has custody or discretionary authority over client funds or securities to be bonded for at least $35,000; and

WHEREAS, the current version of K.A.R. 81-14-9(e) further provides under paragraph (1) that an additional bond may be required for an investment adviser that does not comply with requirements for minimum adjusted net worth; and

WHEREAS, staff for the Office of the Kansas Securities Commissioner have recommended that the surety bond requirements of K.A.R. 81-14-9(e) are no longer necessary, and therefore, should no longer be required; and

WHEREAS, K.S.A. 17-12a605 grants the Securities Commissioner the authority to issue special orders as necessary or appropriate to carry out the KUSA; and

WHEREAS, K.S.A. 17-12a406(e) grants the Securities Commissioner the authority to waive, in whole or in part, specific requirements in connection with the registration of investment advisers.

IT IS, THEREFORE, ORDERED BY THE COMMISSIONER that the surety bond requirements of K.A.R. 81-14-9(e) are hereby waived, and therefore, no longer required.

IT IS FURTHER ORDERED that this order shall be effective on the date indicated below and that it shall be automatically vacated upon the adoption of any future amendment to K.A.R. 81-14-9.

IT IS SO ORDERED.

Entered at Topeka, Kansas, on this 21st day of May, 2012.

OFFICE OF THE SECURITIES COMMISSIONER KANSAS

[redacted]

Aaron Jack
Securities Commissioner

FILED
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Kansas
Securities Commissioner

BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF KANSAS

In re:	)	
	)	
Waiver of Certain Requirements Under K.A.R. 81-14-9 and New Requirement Authorized by K.A.R. 81-14-10 for Disclosure Regarding Insurance Coverage	)))))	Docket No. 13E009

Special Order – Waiver of Certain Requirements for Investment Advisers Under K.A.R. 81-14-9 and New Requirement Authorized by K.A.R. 81-14-10 For Disclosure Regarding Insurance Coverage

WHEREAS, the current version of K.A.R. 81-14-9(b)(1)(F) requires every investment adviser registered or required to be registered under the Kansas Uniform Securities Act (KUSA) that has custody, as defined in paragraph (a)(2)(A)(ii), by having fees deducted from client accounts held by a qualified custodian, to provide a notice of fee deduction to the qualified custodian and concurrently provide an invoice for such fees to each client along with an itemization of the fee calculation; and

WHEREAS, the current version of K.A.R. 81-14-9(c)(1) requires each investment adviser that has custody of client funds or securities and each investment adviser that receives over $500 in fees six months or more in advance to have the balance sheet required by that subsection to be audited and reported upon by an independent CPA; and

WHEREAS, the current version of K.A.R. 81-14-9(d) requires every investment adviser registered or required to be registered under the KUSA that has custody or discretionary authority over client funds or securities to maintain at all times a minimum adjusted net worth, as defined by K.A.R. 81-14-9(a)(1), of $35,000 for investment advisers having custody, or $10,000 for investment advisers having discretionary authority over client funds or securities unless an exception specified by that subsection applies; and

WHEREAS, staff for the Office of the Kansas Securities Commissioner have recommended that the requirements for a notice of fee deduction, for the balance sheet to be audited, and for minimum adjusted net worth to be maintained as further described above with reference to various subsections of K.A.R. 81-14-9 are no longer necessary, and therefore, should no longer be required; and

WHEREAS, K.S.A. 17-12a411(g) grants the Securities Commissioner authority by a rule adopted or order issued under KUSA to require every investment adviser registered or required to be registered under KUSA to furnish or disseminate information to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients; and

WHEREAS, K.A.R. 81-14-10(b)(2) requires each investment adviser registered or required to be registered under KUSA to provide to each client and prospective client a firm brochure and one or more supplements to contain all information required by Part 2 of Form ADV and any other relevant information that the Securities Commissioner may require; and

WHEREAS, K.S.A. 17-12a605 grants the Securities Commissioner the authority to issue special orders as necessary or appropriate to carry out the KUSA; and

WHEREAS, K.S.A. 17-12a406(e) grants the Securities Commissioner the authority by order issued under KUSA to waive, in whole or in part, specific requirements in connection with the registration of investment advisers or to impose other conditions not inconsistent with the National Securities Markets Improvement Act of 1996.

IT IS, THEREFORE, ORDERED BY THE COMMISSIONER that the requirements for a notice of fee deduction as specified by K.A.R. 81-14-9(b)(1)(F), the balance sheet audit as specified by K.A.R. 81-14-9(c)(1), and minimum adjusted net worth as specified by K.A.R. 81-14-9(d) are hereby waived, and therefore, no longer required.

IT IS FURTHER ORDERED that every investment adviser registered or required to be registered under KUSA shall attach a supplement to its brochure or Form ADV, Part 2 for delivery to all clients and prospective clients in this state which discloses the presence or absence of professional liability insurance coverage for its investment advisory services; and in the event a client or prospective client in Kansas requests proof of such professional liability insurance coverage, the investment adviser shall within 30 days provide a copy of the insurance agreement.

IT IS FURTHER ORDERED that this order shall be effective on the date indicated below and that it shall be automatically vacated upon the adoption of any future amendment to K.A.R. 81-14-9.

IT IS SO ORDERED.

Entered at Topeka, Kansas, on this 7th day of November, 2012.

[redacted]

Aaron Jack
Securities Commissioner

Office of the Securities Commissioner of Kansas
Kansas Administrative Regulation 81-14-9
Effective October 25, 2013

81-14-9. Custody of client funds or securities; safekeeping; financial reporting.

(a) Definitions. For the purposes of this regulation, the following definitions shall apply:

(1) "Custody" means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them or the ability to appropriate them.

(A) Each of the following circumstances shall be deemed to constitute custody:

(i) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving the funds or securities;

(ii) any arrangement, including a general power of attorney, under which an investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the adviser's instruction to the custodian; and

(iii) any arrangement that gives an investment adviser or its supervised person legal ownership of or access to client funds or securities, which may include an arrangement in which the investment adviser or its supervised person is the trustee of a trust, the general partner of a limited partnership, the managing member of a limited liability company, or a comparable position for a pooled investment vehicle.

(B) Receipt of a check drawn by a client and made payable to an unrelated third party shall not meet the definition of custody if the investment adviser forwards the check to the third party within three business days of receipt and the adviser maintains the records required under K.A.R. 81-14-4(b)(22).

(2) "Independent party" means a person that meets the following conditions:

(A) Is engaged by an investment adviser to act as a gatekeeper for the payment of fees, expenses, and capital withdrawals from a pooled investment;

(B) does not control, is not controlled by, and is not under common control with the investment adviser; and

(C) does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(3) "Independent representative" means a person who meets the following conditions:

(A) Acts as an agent for an advisory client, which may include a person who acts as an agent for limited partners of a pooled investment vehicle structured as a limited partnership, members of a pooled investment vehicle structured as a limited liability company, or other beneficial owners of another type of pooled investment vehicle;

(B) is obliged by law or contract to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;

(C) does not control, is not controlled by, and is not under common control with the investment adviser; and

(D) does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(4) "Qualified custodian" means any of the following independent institutions or entities:

(A) A bank or savings association that has deposits insured by the federal deposit insurance corporation;

(B) a broker-dealer registered under the act who holds client assets in customer accounts and complies with K.A.R. 81-3-7(d);

(C) a futures commission merchant registered under section 6f of the commodity exchange act, 7 U.S.C. § 6f, who holds client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity and options of the commodity for future delivery; and

(D) a foreign financial institution that customarily holds financial assets for its customers, if the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

(b) Safekeeping of client funds and securities.

(1) Requirements. An investment adviser registered or required to be registered under the act shall not have custody of client funds or securities unless the investment adviser meets each of the following conditions. "An act, practice, or course of business that operates or would operate as a fraud or deceit," as used in K.S.A. 17-12a502 and amendments thereto, shall include any violation of this subsection.

(A) Notice to administrator. The investment adviser shall notify the administrator promptly on form ADV that the investment adviser has or will have custody.

(B) Qualified custodian. A qualified custodian shall maintain the funds and securities in a separate account for each client under each client's name, or in accounts that contain only funds and securities of the investment adviser's clients under the name of the investment adviser as agent or trustee for each client.

(C) Notice to clients. If an investment adviser opens an account with a qualified custodian on behalf of its client, either under the client's name or under the investment adviser's name as agent, the investment adviser shall notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained. The notice shall be given promptly when the account is opened and following any changes to the information.

(D) Account statements. The investment adviser shall ensure that account statements are sent to each client for whom the adviser has custody of funds or securities.

(i) Statements sent by the qualified custodian. If a qualified custodian maintains accounts containing funds or securities, the qualified custodian may send account statements to clients if the investment adviser has a reasonable basis for believing that the qualified custodian sends an account statement at least quarterly to each of the adviser's clients for whom the custodian maintains funds or securities and that the account statement sets forth all transactions in the account during the period and identifies the amount of funds and amount of each security in the account at the end of the period.

(ii) Statements sent by the adviser. If account statements are not sent by the qualified custodian in accordance with paragraph (b)(1)(D)(i), the investment adviser shall send an account statement at least quarterly to each client for whom it has custody of funds or securities. The account statement shall set forth all transactions in the account during the period and identify the amount of funds and amount of each security of which it has custody at the end of the period. At least once during each calendar year, a CPA firm that is registered and authorized to provide attest services in compliance with requirements of the state where the investment adviser is domiciled shall be engaged by the investment adviser to attest to the accuracy, in all material respects, of the account statements sent to clients by the investment adviser based on a comparison with records of transactions and balances of funds and securities maintained by the qualified custodian. The attest engagement shall be performed in accordance with attestation standards established by the AICPA and contained in the "AICPA professional standards," as specified in K.A.R. 74-5-2. The CPA firm shall perform the attest engagement without prior notice or announcement to the adviser on a date that changes from year to year as chosen by the CPA firm. The CPA firm shall file a copy of its independent accountant's report with the administrator within 30 days after the completion of the attest engagement. The CPA firm, upon finding any material exceptions during the course of the engagement, shall notify the administrator of the finding within two business days by means of a facsimile transmission or electronic mail, followed by first-class mail, directed to the attention of the administrator.

(iii) Special rule for pooled investment vehicles. If the investment adviser is a general partner of a pooled investment vehicle structured as a limited partnership, is a managing member of a pooled investment vehicle structured as a limited liability company, or holds a comparable position for another type of pooled investment vehicle, the account statements required under this subsection shall be sent to each limited partner, member, or other beneficial owner or that person's independent representative.

(E) Independent representatives. A client may designate an independent representative to receive, on the client's behalf, notices and account statements as required under paragraphs (b)(1)(C) and (b)(1)(D). Thereafter, the investment adviser shall send all notices and statements to the independent representative.

(F) Direct fee deduction. Each investment adviser who has custody, as defined in paragraph (a)(1)(A)(ii), by having fees directly deducted from client accounts held by a qualified custodian shall obtain prior written authorization from the client to deduct advisory fees from the account held with the qualified custodian.

(G) Pooled investments. Each investment adviser who has custody, as defined in paragraph (a)(1)(A)(iii), and who does not meet the exception provided under paragraph (b)(2)(C) shall comply with each of the following requirements:

(i) Engage an independent party. The investment adviser shall hire an independent party to review all fees, expenses, and capital withdrawals from the pooled accounts.

(ii) Review of fees. The investment adviser shall send all invoices or receipts to the independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation so that the independent party can determine that the payment is in accordance with the agreement governing the pooled investment vehicle and so that the independent party can forward to the qualified custodian approval for payment of an invoice with a copy to the investment adviser.

(iii) Notice of safeguards. The investment adviser shall notify the administrator on form ADV that the investment adviser intends to use the safeguards specified in this subsection.

(2) Exceptions.

(A) Shares of mutual funds. With respect to shares of a mutual fund that is an open-end company as defined in section 5(a)(1) of the investment company act of 1940, 15 U.S.C. 80a-5(a)(1), as adopted by reference in K.A.R. 81-2-1, any investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with paragraph (b)(1).

(B) Certain privately offered securities. An investment adviser shall not be required to comply with paragraph (b)(1) with respect to securities that meet the following conditions:

(i) Are acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(ii) are uncertificated, with ownership of the securities recorded only on the books of the issuer or its transfer agent in the name of the client; and

(iii) are transferable only with the prior consent of the issuer or holders of the outstanding securities of the issuer.

(C) Limited partnerships subject to annual audit. An investment adviser shall not be required to comply with paragraph (b)(1) with respect to the account of a limited partnership, limited liability company, or other type of pooled investment vehicle that is subject to audit at least annually and that distributes its audited financial statements presented in conformity with GAAP to all limited partners, members, or other beneficial owners within 120 days after the end of its fiscal year. The investment adviser shall notify the administrator on form ADV that the investment adviser intends to distribute audited financial statements.

(D) Registered investment companies. An investment adviser shall not be required to comply with paragraph (b)(1) with respect to the account of an investment company registered under the investment company act of 1940, 15 U.S.C. 80a-1 et seq.

(E) Beneficial trusts. An investment adviser shall not be required to comply with the safekeeping requirements of paragraph (b)(1) if the investment adviser has custody solely because the investment adviser or an investment adviser representative is the trustee for a beneficial trust, if all of the following conditions are met for each trust:

(i) The beneficial owner of the trust is a parent, grandparent, spouse, sibling, child, or grandchild of the investment adviser representative, including "step" relationships.

(ii) The investment adviser provides a written statement to each beneficial owner of each account setting forth a description of the requirements of paragraph (b)(1) and the reasons why the investment adviser will not be complying with those requirements.

(iii) The investment adviser obtains from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement.

(iv) The investment adviser maintains a copy of both documents described in paragraphs (b)(2)(E)(ii) and (iii) until the account is closed or the investment adviser or investment adviser representative is no longer trustee.

(F) Upon written request and for good cause shown, the requirement to use a qualified custodian may be waived by the administrator. As a condition of granting a waiver, the investment adviser may be required by the administrator to perform the duties of a qualified custodian as specified in paragraph (b)(1).

(c) Financial reporting requirements for investment advisers.

(1) Balance sheet. Each registered investment adviser shall prepare and maintain a balance sheet, as required by K.A.R. 81-14-4(b)(6), each month. The balance sheet shall be dated the last day of the month and shall be prepared within 10 business days after the end of the month. The investment adviser shall file the balance sheet with the administrator, for any month specified by the administrator, within five days after a request by the administrator.

(2) Exemptions. An investment adviser shall be exempt from the requirements of this subsection if the investment adviser has its principal place of business in a state other than Kansas, is properly registered in that state, and satisfies the financial reporting requirements of that state.

(d) Positive net worth requirement.

(1) Each investment adviser that is registered or required to be registered under the act shall maintain at all times a positive net worth.

(2) Notification. Each investment adviser registered or required to be registered under the act shall, by the close of business on the next business day, notify the administrator if the investment adviser is insolvent because its net worth is negative as determined in conformity with GAAP. The notification of insolvency shall include the investment adviser's balance sheet that states the insolvent financial condition on the date the insolvency occurred. Upon receiving the balance sheet, the administrator may require the investment adviser to file additional information by a specified date.

(3) Exception for out-of-state advisers. If an investment adviser has its principal place of business in a state other than Kansas and is properly registered in that state, the investment adviser shall be required to maintain the minimum capital required by the state in which the investment adviser maintains its principal place of business.

(Authorized by K.S.A. 17-12a502(b) and 17-12a605(a); implementing K.S.A. 17-12a411, as amended by L. 2013, ch. 65, sec. 3, and 17-12a502(a)(2); effective Aug. 18, 2006; amended Aug. 15, 2008; amended Oct. 25, 2013.)

Office of the Securities Commissioner of Kansas
Kansas Administrative Regulation 81-14-11
Effective October 25, 2013

81-14-11. Kansas private adviser exemption.

(a) Exemption from registration. An investment adviser shall be exempt from the registration requirements of K.S.A. 17-12a403, and amendments thereto, if both of the following requirements are met:

(1) The investment adviser shall meet each of the following conditions:

(A) Maintain its principal place of business in Kansas;

(B) provide investment advice solely to fewer than 15 clients;

(C) not hold itself out generally to the public as an investment adviser; and

(D) not act as an investment adviser to any investment company registered under the investment company act of 1940, 15 U.S.C. § 80a-1 et seq., or a company that has elected and has not withdrawn its election to be a business development company pursuant to section 54 of the investment company act of 1940, 15 U.S.C. § 80a-54.

(2) Neither the investment adviser nor any of its advisory affiliates or associated investment adviser representatives shall be subject to a disqualification provision as described in rule 262 of SEC regulation A, 17 C.F.R. § 230.262, as adopted by reference in K.A.R. 81-2-1.

(b) Notice filing. Each investment adviser that qualifies for exemption under subsection (a) shall be subject to or exempt from filing a notice with the administrator as follows:

(1) Notice filing requirement. Each investment adviser that manages assets of no more than $25 million on December 31 each year shall complete the identifying information required by item 1 of form ADV, part 1A and file the printed form with the administrator on or before February 1 of the following year. No fee shall be required with the notice filing required by this subsection.

(2) Exemption from notice filing requirement. Each investment adviser that manages assets in excess of $25 million and is registered with the SEC shall be exempt from the notice filing requirements of K.S.A. 17-12a405, and amendments thereto, and of paragraph (1) of this subsection.

(c) Exemption for investment adviser representatives. An investment adviser representative shall be exempt from the registration requirements of K.S.A. 17-12a404, and amendments thereto, if the individual meets the following requirements:

(1) Is employed by or associated with an investment adviser that meets the exemption requirements under subsection (a);

(2) is not subject to a disqualification as described in rule 262 of SEC regulation A, 17 C.F.R. § 230.262; and

(3) does not otherwise act as an investment adviser representative.

(d) Transition. Each investment adviser or investment adviser representative who becomes ineligible for the exemption specified in this regulation shall comply with the registration or notice filing requirements under the act within 90 days after the date of ineligibility.

(Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a403(b)(3), 17-12a404(b)(2), and 17-12a405(b)(3); effective Oct. 25, 2013.)

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U.S. Securities and Exchange Commission

SEC Adopts Rule Under Dodd-Frank Act Defining "Family Offices"

FOR IMMEDIATE RELEASE
2011-134

Washington, D.C., June 22, 2011 — The Securities and Exchange Commission today approved a new rule to define "family offices" that are to be excluded from the Investment Advisers Act of 1940.

The rulemaking stems from the Dodd-Frank Wall Street Reform and Consumer Protection Act.

"Family offices" are entities established by wealthy families to manage their wealth and provide other services to family members, such as tax and estate planning services. Historically, family offices have not been required to register with the SEC under the Advisers Act because of an exemption provided to investment advisers with fewer than 15 clients.

Video: Open Meeting

Chairman Schapiro discusses family offices: Windows Media Player

Text of Chairman's statement

The Dodd-Frank Act removed that exemption so the SEC can regulate hedge fund and other private fund advisers. However, Dodd-Frank also included a new provision requiring the SEC to define family offices in order to exempt them from regulation under the Advisers Act.

The new rule adopted by the SEC enables those managing their own family's financial portfolios to determine whether their "family offices" can continue to be excluded from the Investment Advisers Act.

The rule is effective 60 days after its publication in the *Federal Register*.

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FACT SHEET

Defining A Family Office

How are family offices impacted by the Dodd-Frank Act?

Family offices typically are considered to be investment advisers under the Advisers Act because of the investment advisory services that they provide.

As such, they are subject to the registration requirements set forth in that Act. Historically, however, most family offices have been structured to take advantage of an exemption from registration for firms that advise less than fifteen clients and meet certain other conditions.

The Dodd-Frank Act repeals the 15-client exemption to enable the SEC to regulate hedge fund and other private fund advisers. But, the Dodd-Frank Act includes a new provision requiring the SEC to define family offices in order to exempt them from regulation under the Advisers Act.

Today, the Commission is considering adopting a final rule defining family offices that will be excluded from regulation under the Advisers Act.

Which family offices will be excluded from Advisers Act regulation under the rule?

Any company that:

- Provides investment advice only to "family clients," as defined by the rule.
- Is wholly owned by family clients and is exclusively controlled by family members and/or family entities, as defined by the rule.
- Does not hold itself out to the public as an investment adviser.

Which family members and employees can the family office advise under the exclusion?

- *Family members.* Family members include all lineal descendants (including by adoption, stepchildren, foster children, and, in some cases, by legal guardianship) of a common ancestor (who is no more than 10 generations removed from the youngest generation of family members), and such lineal descendants' spouses or spousal equivalents.
- *Key employees.* Key employees include:
    - Executive officers, directors, trustees, general partners, or persons serving in a similar capacity for the family office or its affiliated family office.
    - Any other employee of the family office or its affiliated family office (other than a clerical or secretarial employee) who, in connection with his or her regular duties, has participated in the investment activities of the family office or affiliated family office, or similar functions or duties for another company, for at least 12 months.
- *Other family clients.* Other family clients generally include:
    - Any non-profit or charitable organization funded exclusively by family clients.

- Any estate of a family member, former family member, key employee, or subject to certain conditions a former key employee.
- Certain family client trusts.
- Any company wholly-owned by and operated for the sole benefit of family clients.

When will family offices have to register with the Commission under the Advisers Act or with applicable state securities authorities if they do not meet the terms of the exclusion?

By March 30, 2012.

Will existing family office exemptive orders be rescinded?

No. Family offices that obtained exemptive orders from the Commission will be able to continue operating under their existing exemptive orders or they may operate under the new rule.

What if a family office will not meet the exclusion on March 30, 2012?

That family office will have to obtain a Commission exemptive order or register as an investment adviser.

Grandfathering Provision

The Dodd-Frank Act requires that the Commission not preclude certain family offices from meeting the new exclusion solely because they provide investment advice to certain clients (and provided that advice prior to January 1, 2010). The adopted rule incorporates this grandfathering provision.

http://www.sec.gov/news/press/2011/2011-134.htm

SEC Adopts Dodd-Frank Act Amendments to Investment Advisers Act

FOR IMMEDIATE RELEASE
2011-133

Washington, D.C., June 22, 2011 – The Securities and Exchange Commission today adopted rules that require advisers to hedge funds and other private funds to register with the SEC, establish new exemptions from SEC registration and reporting requirements for certain advisers, and reallocate regulatory responsibility for advisers between the SEC and states.

Video: Open Meeting

Chairman Schapiro discusses amendments to Investment Advisers Act:
Windows Media Player

Text of Chairman's statement

The rules adopted by the Commission implement core provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding investment advisers, including those that advise hedge funds.

"These rules will fill a key gap in the regulatory landscape," said SEC Chairman Mary L. Schapiro. "In particular, our proposal will give the Commission, and the public, insight into hedge fund and other private fund managers who previously conducted their work under the radar and outside the vision of regulators."

In addition, the Commission amended rules to expand disclosure by investment advisers, particularly about the private funds they manage, and revised the Commission's pay-to-play rule.

The rules implement a transitional exemption period so that private advisers, including hedge fund and private equity fund advisers, newly required to register do not have to do so until March 30, 2012. The rules regarding exemptions for venture capital fund and certain private fund advisers are effective July 21, 2011.

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FACT SHEET

Dodd-Frank Act Amendments to the Investment Advisers Act

Background

A large number of individuals and institutions invest a significant amount of assets in private funds, such as hedge funds and private equity funds. However, until the passage of the Dodd-Frank Act, advisers managing those assets were subject to little regulatory oversight.

With the Dodd-Frank Act, Congress closed this regulatory gap by generally extending the registration requirements under the Investment Advisers Act to the advisers of these funds. The new law also provided the Commission with the ability to require the limited number of advisers to private funds that will not have to register to file reports about their business activities.

Further, in acknowledging the Commission's limited examination resources – and in light of the new responsibilities for private fund advisers – the Dodd-Frank Act reallocated regulatory responsibility for certain mid-sized investment advisers to the state securities authorities.

Private Fund Advisers and Commission Registration

For many years, advisers to private funds have been able to avoid registering with the Commission because of an exemption that applies to advisers with fewer than 15 clients – an exemption that counted each fund as a client, as opposed to each investor in a fund. As a result, some advisers to hedge funds and other private funds have remained outside of the Commission's regulatory oversight even though those advisers could be managing large sums of money for the benefit of hundreds of investors.

Title IV of the Dodd-Frank Act eliminated this private adviser exemption. Consequently, many previously unregistered advisers, particularly those to hedge funds and private equity funds, will have to register with the Commission and be subject to its regulatory oversight, rules and examination.

These advisers will be subject to the same registration requirements, regulatory oversight, and other requirements that apply to other SEC-registered investment advisers. To provide these advisers with a window to meet their new obligations, the transition provisions the Commission is adopting today will require these advisers to be registered with the Commission by March 30, 2012.

Reporting Requirements for Hedge Fund and Other Investment Advisers

Background

When investment advisers register with the Commission, they provide information in their registration form that is not only used for registration purposes, but that is used by the Commission in its regulatory program to support its mission to protect investors.

To enhance its ability to oversee investment advisers to private funds, the Commission is requiring advisers to provide additional information about the private funds they manage. The information obtained as a result of these amendments will assist the Commission in fulfilling its increased responsibility for private fund advisers arising from the Dodd-Frank Act.

The Form

Under the amended adviser registration form, advisers to private funds will have to provide:

- Basic organizational and operational information about each fund they manage, such as the type of private fund that it is (e.g., hedge fund, private equity fund, or liquidity fund), general information about the size and ownership of the fund, general fund data, and the adviser's services to the fund.
- Identification of five categories of "gatekeepers" that perform critical roles for advisers and the private funds they manage (i.e., auditors, prime brokers, custodians, administrators and marketers).

These reporting requirements are designed to help identify practices that may harm investors, deter advisers' fraud, and facilitate earlier discovery of potential misconduct. And this information will provide for the first time a census of this important area of the asset management industry.

In addition, the Commission is adopting other amendments to the adviser registration form to improve its regulatory program. These amendments will require all registered advisers to provide more information about their advisory business, including information about:

- The types of clients they advise, their employees, and their advisory activities.
- Their business practices that may present significant conflicts of interest (such as the use of affiliated brokers, soft dollar arrangements and compensation for client referrals).

The rules also will require advisers to provide additional information about their non-advisory activities and their financial industry affiliations.

Reporting Requirements for Exempt Advisers

Background

While many private fund advisers will be required to register, some of those advisers may not need to if they are able to rely on one of three new exemptions from registration under the Dodd-Frank Act, including exemptions for:

- Advisers solely to venture capital funds.
- Advisers solely to private funds with less than $150 million in assets under management in the U.S.
- Certain foreign advisers without a place of business in the U.S.

The Commission can still impose certain reporting requirements upon advisers relying upon either of the first two of these exemptions ("exempt reporting advisers").

The Rules

Under the new rules, exempt reporting advisers will nonetheless be required to file, and periodically update, reports with the Commission, using the same registration form as registered advisers.

Rather than completing all of the items on the form, exempt reporting advisers will fill out a limited subset of items, including:

- Basic identifying information for the adviser and the identity of its owners and affiliates.
- Information about the private funds the adviser manages and about other business activities that the adviser and its affiliates are engaged in that present conflicts of interest that may suggest significant risk to clients.
- The disciplinary history (if any) of the adviser and its employees that may reflect on the integrity of the firm. Exempt reporting advisers will file reports on the Commission's investment adviser electronic filing system (IARD), and these reports will be publicly available on the Commission's website. These advisers will be required to file their first reports in the first quarter of 2012.

Reallocation of Regulatory Responsibility

Background

Since 1996, regulatory responsibility for investment advisers has been divided between the Commission and the states, primarily based on the amount of money an adviser manages for its clients. Under existing law, advisers generally may not register with the Commission unless they manage at least $25 million for their clients.

The Dodd-Frank Act raises the threshold for Commission registration to $100 million by creating a new category of advisers called "mid-sized advisers." A mid-sized adviser, which generally may not register with the Commission and will be subject to state registration, is defined as an adviser that:

- Manages between $25 million and $100 million for its clients.
- Is required to be registered in the state where it maintains its principal office and place of business.
- Would be subject to examination by that state, if required to register.

As a result of this amendment to the Investment Advisers Act, about 3,200 of the current 11,500 registered advisers will switch from registration with the Commission to registration with the states. These advisers will continue to be subject to the Advisers Act's general anti-fraud provisions.

The Rules

The Commission is adopting amendments to several of its current rules and forms to:

- Reflect the higher threshold required for Commission registration.
- Provide a buffer to prevent advisers from having to frequently switch between Commission and state registration.
- Clarify when an adviser will be a mid-sized adviser.
- Facilitate the transition of advisers between federal and state registration in accordance with the new requirements. Advisers registered with the Commission will have to declare that they are permitted to remain registered in a filing in the first quarter of 2012, and those no longer eligible for Commission registration will have until June 28, 2012 to complete the switch to state registration.

Pay-to-Play

The Rule

The Commission also is amending the investment adviser "pay-to-play" rule in response to changes made by the Dodd-Frank Act. The pay to play rule is designed to prevent an adviser from seeking to influence government officials' awards of advisory contracts through political contributions.

Under the amendment, an adviser will be permitted to pay a registered municipal advisor to act as a placement agent to solicit government entities on its behalf, if the municipal advisor is subject to a pay-to-play rule adopted by the MSRB that is at least as stringent as the investment adviser pay-to-play rule. The MSRB received new authority over municipal advisors under the Dodd-Frank Act. Advisers will also continue to be permitted to hire as a placement agent an SEC registered investment adviser or a broker-dealer that is subject to a pay-to-play rule adopted by FINRA that is at least as stringent as the investment adviser pay-to-play rule.

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Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers

Background

As previously described, the Dodd-Frank Act eliminated the private adviser exemption and created three new exemptions for:

- Advisers solely to venture capital funds.
- Advisers solely to private funds with less than $150 million in assets under management in the United States.
- Certain foreign advisers without a place of business in the United States.

The Commission is adopting rules that would implement these exemptions and define various terms.

New Exemptions

Definition of Venture Capital Fund

The Dodd-Frank Act amended the Advisers Act to exempt from registration advisers that only manage venture capital funds, and directed the Commission to define the term "venture capital fund." The Commission is adopting a definition of "venture capital fund" that is designed to effect Congress' intent in enacting this exemption.

Under the definition, a venture capital fund is a private fund that:

- Invests primarily in "qualifying investments" (generally, private, operating companies that do not distribute proceeds from debt financings in exchange for the fund's investment in the company); may invest in a "basket" of non-qualifying investments of up to 20 percent of its committed capital; and may hold certain short-term investments.
- Is not leveraged except for a minimal amount on a short-term basis.
- Does not offer redemption rights to its investors.
- Represents itself to investors as pursuing a venture capital strategy.

Under a grandfathering provision, funds that began raising capital by the end of 2010 and represented themselves as pursuing a venture capital strategy would generally be considered venture capital funds. The Commission is adopting this approach because it could be difficult or impossible for advisers to conform these pre-existing funds, which generally have terms in excess of 10 years, to the new definition.

Private Fund Advisers With Less Than $150 Million in Assets Under Management in U.S.

The Commission also is adopting a rule that would implement the new statutory exemption for private fund advisers with less than $150 million in assets under management in the United States. The rule largely tracks the provision of the statute.

Foreign Private Advisers

The Dodd-Frank Act also amended the Advisers Act to provide for an exemption from registration for foreign advisers that do not have a place of business in the United States, and have:

- Less than $25 million in aggregate assets under management from U.S. clients and private fund investors.
- Fewer than 15 U.S. clients and private fund investors.

The Commission is adopting rules to define certain terms included in the statutory definition of "foreign private adviser" in order to clarify the application of the foreign private adviser exemption and reduce the potential burdens for advisers that seek to rely on it. The rule incorporates definitions set forth in other Commission rules, all of which are likely to be familiar to foreign advisers active in the U.S. capital markets.

http://www.sec.gov/news/press/2011/2011-133.htm

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Division of Investment Management: Frequently Asked Questions Regarding Mid-Sized Advisers

What is a "mid-sized adviser"?

A "mid-sized adviser" is an investment adviser that has between $25 million and $100 million of assets under management.

Are mid-sized advisers required to register with the Securities and Exchange Commission?

After July 21, 2011, a mid-sized adviser must register with the Securities and Exchange Commission if it:

i. is not required to be registered as an adviser with the state securities authority in the state where it maintains its principal office and place of business; or
ii. is not subject to examination as an adviser by the state where it maintains its principal office and place of business.

A mid-sized adviser that does not meet either one of these two requirements is prohibited from registering as an adviser with the Commission after July 21, 2011, but will have to register with the state securities authorities. There are a few exceptions to the general prohibition from SEC registration in rule 203A-2, such as for certain multi-state investment advisers and pension consultants. In addition, a mid-sized adviser that is required to register with the SEC, may elect to not register if it can rely on an exemption from registration, such as those for certain advisers to private funds.

In which states would a mid-sized adviser not be "subject to examination" by the state securities authority?

New York or Wyoming.

A mid-sized adviser with its principal office and place of business in either of those states is not "subject to examination" by the state securities authority and would have to register with the SEC. A mid-sized adviser with its principal office and place of business in any other state is "subject to examination." This information will be updated promptly upon notification by a state securities authority of any change to examination status.

How does a mid-sized adviser determine if it is "required to be registered" in the state where it maintains its principal office and place of business?

A mid-sized adviser should consult the investment adviser laws or the state securities authority for that state to determine if it is required to register as an investment adviser in that state.

When is a mid-sized adviser that is no longer eligible for Commission registration required to switch to state registration?

A mid-sized adviser registered with the Commission as of July 21, 2011 must remain registered with the Commission until January 1, 2012 (unless an exemption from Commission registration is available). Each adviser registered with the Commission on January 1, 2012 must file an amendment to its Form ADV no later than March 30, 2012, which for most advisers will be their annual updating amendment. A mid-sized adviser that is no longer eligible for Commission registration will need to be registered with the state securities authorities by June 28, 2012, and must withdraw its Commission registration by filing Form ADV-W, indicating it is filing a "partial withdrawal," no later than that date.

The adopting release amending Form ADV, dated June 22, 2011 (the "Adopting Release") can be found at:
http://www.sec.gov/rules/final/2011/ia-3221.pdf .

Amended Form ADV can be found at:
http://www.sec.gov/rules/final/2011/ia-3221-appd.pdf .

Amended Form ADV instructions can be found at:
http://www.sec.gov/rules/final/2011/ia-3221-appa.pdf and
http://www.sec.gov/rules/final/2011/ia-3221-appb.pdf .

http://www.sec.gov/divisions/investment/midsizedadviserinfo.htm